



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2014-10

Legistar #: 20140430

Board of Zoning Appeals Hearing: Monday, May 19, 2014 – 6:00 p.m.

Property Owner: Hamid Nikfarjam
4552 Forest Peak Circle
Marietta, GA 30066

Address: 447 Atlanta Street

Land Lot: 02880 District: 17 Parcel: 0380

Council Ward: 1A

Existing Zoning: OI (Office Institutional)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to increase occupancy from 24 to 42 beds. [§ 708.23(B.19)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.

3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



447 Atlanta Street



Driveway (right) leading to rear parking area



Rear parking area



New parking spaces (3) in front



Recommended Action:

Denial. Hamid Nikfarjam, owner and applicant is requesting variances at 447 Atlanta Street that would allow him to construct 6 additional rooms for an assisted living facility/nursing home and to increase occupancy from 24 beds to 42 beds. The property is a 0.436 acre parcel zoned OI (Office Institutional), and is located along the east side of Atlanta Street. The subject property is surrounded predominately by OI zoned properties. The property located immediately to the rear is zoned CRC (Community Retail Commercial).

According to the current zoning regulations, an assisted living/nursing home may have a maximum of 20 beds per gross acre of development. Since the subject is 0.436 acres, if developed today, it would only be allowed to have 8 beds; however, it currently has a total of 24 beds, and the applicant is seeking to substantially increase the occupancy to 42 beds. In order for the applicant to increase occupancy, the listed variance would need to be granted.

In 1990, the previous owner had applied for a variance (File # V-900972) that allowed him to construct an addition to the property to begin a nursing home/assisted living facility. The variance was approved for the following:

- V-9000972:
 - Variance to reduce the south side property line setback from 15 ft. to 5 ft.
 - Variance to reduce rear setback from 40 ft. to 20 ft.

The approved variance also allowed the occupancy of the building to be increased from 15 residents to 24 residents. At that time, City zoning regulations did not include a specific limitation on the total number of residents or beds allowed per acre. That regulation does not appear in the zoning ordinance until 1998.

The applicant applied for and was denied this very same variance in May 2013 (V2013-22). A request to appeal the twelve month waiting period to re-apply for the same variance was also denied in October 2013 (V2013-41).

The Marietta Fire Department has reviewed this proposal and made an inspection of the facility. They have determined, according to their regulations and the total livable area of the building being 11,000 square feet, that the maximum occupancy of the facility would be 55 people, including staff.

Parking requirements for assisted living facilities/nursing homes are one (1) parking space for every four (4) beds. Since the applicant is requesting to increase the occupancy to forty two (42) beds, eleven (11) parking spaces would be required on the site. Since May of last year the parking spaces have been numbered and striped. There are eleven (11) parking spaces in the rear and the applicant has also recently constructed a parking pad in the front, which will accommodate three (3) additional cars.



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

Although the site can provide the required parking for the increase in occupancy, the driveway serving the site is very narrow and tight. Staff had difficulty backing the city vehicle out of a parking space in order to exit.

Although the provision of adequate assisted living facilities is of benefit to the community as a whole, the applicant has not provided any information as to why this site should not have to adhere to the regulations or why this situation is exceptional to any other request to increase density. As such, **Staff recommends denial of this variance request.**